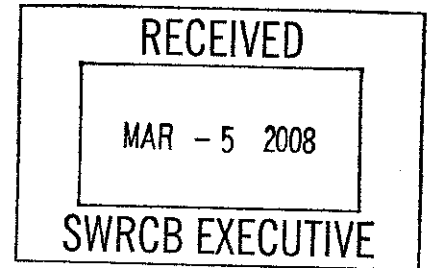


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HEAL THE BAY

3/18/08 Bd. Mtg. Item 11
Wetlands & Riparian Areas
Deadline: 3/5/08 by 12 p.m.

Heal the Bay

1444 9th Street
Santa Monica CA 90401ph 310 451 1550
fax 310 496 1902info@healthebay.org
www.healthebay.org

March 5, 2008

Chairwoman Doduc and Board Members
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comments on the Proposed Board Resolution to Develop a Policy to Protect Wetlands and Riparian Areas

Dear Chairwoman Doduc and Board Members:

On behalf of Heal the Bay, we submit the following comments on the proposed State Water Resources Control Board ("State Board") resolution to develop a policy to protect wetlands and riparian areas ("draft resolution"). We appreciate the opportunity to provide these comments.

We commend the State Board for moving forward in developing a statewide policy on wetlands and riparian areas, as these habitats are among the state's most valuable, most heavily impacted, and most threatened natural resources. In California, over 90 percent of historic wetlands and over 85 percent of riparian areas have been lost to development. Further a 2007 UCLA study found that despite mitigation required through the Clean Water Act Section 401 process, "...most mitigation sites were not optimally functioning wetlands based on the criteria we established from reference wetlands across the state." Nevertheless, recent U.S. Supreme Court rulings have reduced the jurisdiction of the Clean Water Act over wetland and riparian areas, making the need for a unified statewide policy all the more critical in ensuring consistent and effective protection of wetlands and riparian areas in the state.

In 2007, the State Board held a series of CEQA public scoping meetings that set forth a handful of policy alternatives. It is unclear how this draft resolution stems from any of these previously proposed alternatives. The draft resolution directs the State Board staff to "consider additional alternatives and recommendations other than those outlined in the 2004 work plan." Does this include the review of those alternatives discussed at the scoping meetings held in March 2007? As Heal the Bay staff noted at the scoping meeting, we are very supportive of "Alternative 4" and would like to see a state policy that is closely aligned with the protective and comprehensive goals of "Alternative 4." In addition, we have the following specific comments regarding the draft resolution:

- The draft resolution specifies a phased approach to developing the policy. However, separating policy development into different phases is not a constructive or time-effective approach to this issue. Valuable wetland and riparian habitats continue to be destroyed, and a policy that adequately protects these habitats and addresses the failure of wetland mitigation though the 401 process is needed sooner, not later. We urge the State Board to complete all phases of the policy by mid- 2009.



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- The draft resolution states that the policy would build off of the U.S. Army Corps of Engineers ("ACOE") definition of a wetland. It is critical for the State Board to develop protective definitions for wetlands and riparian areas that go beyond the ACOE definition, as the current ACOE wetland definition is not broad enough to fully encompass the diversity of California's wetlands. Thus, we urge the State Board to consider those definitions used by the California Department of Fish and Game and the California Coastal Commission. Specifically, we suggest developing a 1 or 2 parameter definition as opposed to the ACOE's narrow 3-parameter definition for wetlands.
- The resolution proposes developing a "framework for protecting water quality and beneficial uses that relies on sequential avoidance, minimization, and mitigation impacts." We strongly encourage the State Board to have a policy which emphasizes avoidance above all, and only considers minimization and mitigation when avoidance is impossible. Minimization and mitigation requirements should cover *all* disturbances, including, but not limited to those listed in "Alternative 4."
- As described in "Alternative 4," the framework for protecting water quality and beneficial uses should address: cumulative impacts of discharges and activities; functional assessment methodology; mitigation requirements; and performance standards to ensure mitigation success in creating *functioning* wetlands. This final element is critical, as mitigation too often only focuses on maintaining the vegetation associated with a wetland and not the hydrology which is essential for wetland function.
- We strongly support the draft resolution's inclusion of guidance on monitoring wetland condition and function. We feel it is critical for policy to include requirements for both water quality monitoring and bioassessment monitoring.

In sum, we strongly support the State Board's effort to develop a statewide policy to protect wetlands and riparian areas. However, we encourage the State Board to use "Alternative 4" as a template for developing the final policy and to combine the phases of policy development to ensure the timely protection of wetland and riparian areas.

If you have any question, please do not hesitate to contact us at (310) 451-1500.

Sincerely,

Kirsten James
Water Quality Director

Charlotte Stevenson
Staff Scientist